Geoforum 49 (2013) 224–232

Contents lists available at SciVerse ScienceDirect

Geoforum

journal homepage: www.elsevier.com/locate/geoforum

Kissing is not a universal right: Sexuality, law and the scales of citizenship

Phil Hubbard

School of Social Policy, Sociology and Social Research, University of Kent, Chatham Maritime, Kent ME4 4AG, United Kingdom

ARTICLE INFO

Article history:
Available online 7 September 2012

Keywords:
Sexual citizenship
Legal geography
LGBT
Licensing
The body

ABSTRACT

Equalities legislation has provided the basis for lesbian and gay-identified individuals to create new spaces of sexual inclusion in the UK. However, national rights to sexual orientation equality do not always translate into equal rights to sexual expression at the local scale. The paper demonstrates this by focusing on an instance where a display of homosexual intimacy – a same-sex kiss – was legitimately removed from a licensed premise despite the existence of legislation outlawing homophobic discrimination. This seeming contradiction demonstrates the limits of a perspective that regards citizenship as something negotiated solely at the scale of the nation-state, with those charged with maintaining public order at the local scale often appearing indifferent to nationally-secured rights. The paper accordingly warns against essentialist notions of the state, concluding that the interplay of a heterogeneous set of actors operating on different jurisdictional scales ultimately determines the limits of sexual citizenship.

1. Introduction

Since Smith (1989) called for geographers to re-engage with political issues by exploring the relationship between civil society and the nation-state, citizenship has been a prominent concept in geographical research. Yet because this work has taken manifold forms, sometimes invoking citizenship as a normative ideal, and sometimes as an empirical lived reality, Staeheli (2010) concludes citizenship's conceptual value has diminished. In effect, citizenship has become a chaotic concept that can obscure as much as it reveals. However, rather than consigning citizenship to the conceptual scrapheap, Staeheli argues that geographers might usefully conceptualise citizenship as a *process* involving multiple sites and practices. In arguing this, Staeheli (2010, p. 399) stresses there are no stable, fixed answers to the question of where citizenship and citizen-subjects are located. In this sense, she proposes that citizenship is not simply negotiated at the level of the nation-state through acts of boundary-drawing that mark out some as less deserving of legal rights, and others as more deserving. Rather, she speaks of citizenship as relational, with the tight link between the nation state and citizenship having been weakened by the emergence of post-national, transnational, cosmopolitan and global citizenships – as well as local and regional ones (see also Fenster, 2005; Isin, 2011; Trudeau, 2012 on the re-territorialisation of citizenship).

Taking Staeheli's suggestion seriously, this paper conceptualises citizenship as contingent on the scalar legal geographies which combine, sometimes in contradictory manners, to shape the rights we possess in particular spaces. Rather than suggesting that there is an immutable social contract between the nation-state and its citizen-subjects, citizenship is taken here to represent an ongoing process wherein the rights secured at the national level can be overridden or undermined by laws enacted at other, lesser, scales. This paper's consideration of the interplay between national equalities legislation and 'municipal law' brings this multi-scalar perspective into sharper focus. Key here is that the former fixates on the rights and responsibilities of individuals and the latter on the use of land and property (Valverde, 2005). This incommensurability means that the rights secured at the national or supra-national scale do not always translate into rights to space, with those charged with maintaining public order in the 'here-and-now' often indifferent to wider questions of fairness and equality.

To make this argument, this paper focuses on the contested legal geographies of a same-sex kiss, exploring an instance where a couple's rights to sexual expression and intimacy were overwhelmed by appeals to public orderliness underpinned by municipal law. This exploration takes in discussions in socio-legal studies about the scales at which law operates (e.g. Blandy et al., 2006; Butler, 2009; Valverde, 2010), as well as debates about rights to space as expressed, for example, in diverse literatures on the 'right to the city' (e.g. Mitchell, 1997; Purcell, 2003; Blomley, 2010). However, given the example raises particular arguments about sexual and intimate rights, I begin by showing how notions of sexual citizenship have been invoked in the debates surrounding gender and sexual equality.

E-mail address: P.Hubbard@kent.ac.uk

0016-7185/$ - see front matter © 2012 Elsevier Ltd. All rights reserved.
http://dx.doi.org/10.1016/j.geoforum.2012.08.002

2. Sexual citizenship and the law

Famously, Arendt (1986, p. 277) defined citizenship as the 'right to have rights'. Despite the ideal of universal rights, in practice the affiliation forged between the individual, the state and the community means that this right cannot be extended to all. This implies that citizenship is an inherently exclusionary concept. One major conclusion of citizenship studies is that the rights associated with citizenship are accordingly freighted with understandings of appropriate subject-positions and identities (Isin, 2011). Feminist perspectives have been particularly valuable in this respect, showing that state citizenship has, in its modern Westphalian version, been defined around unachievable masculine norms, with the citizen idealised as a 'public man' (Fenster, 2005). Queer perspectives have pushed this critique further by arguing that this ideal citizen is also heterosexualised, with certain rights of self-determination and sexual autonomy being denied to those whose sexualities fall outside the heterosexual ideal (Richardson, 1998; Bell and Binnie, 2002). Rubin's (1984, p. 91) much-cited analysis of sexual morality, for example, describes how the state strips rights away from 'citizen-perverts', defined as those who lifestyles and sexual proclivities fall outside the 'charmed circle' of sexualities regarded as 'healthy and holy'. As Bell (1995, p. 150) writes, 'the figure of the citizen-pervert operates, then, as a constant reminder of the limits of the spaces of sexual citizenship; a figure tucked between the rigid notions of public and private, between sin and crime, disrupting, destabilizing, disordering'.

This notion of sexual citizenship has proved highly significant in studies that relate sexual marginalisation to practices of statehood, often via Foucauldian notions of governmentality (see especially Weeks, 1998). More significantly, perhaps, and despite a counter-current of queer anti-sociality which questions the benefits of full citizenship (Halberstam, 2008), discourses of sexual citizenship have been important in encouraging many lesbian and gay activists to adopt a language of rights (Evans, 1993). While such claims to sexual citizenship often relate to matters of sexual practice (i.e. sexual consent, autonomy, and pleasure), Richardson (1998) argues that these also encompass rights to express sexual identities, and have them acknowledged as legitimate in the public sphere. For such reasons, sexual citizenship implies the movement of the sexual from the private, intimate sphere into a public sphere of rights and responsibilities (Hubbard, 2001). For example, in many jurisdictions the fight to have civil partnership and/or gay marriage legally recognised has involved claims to citizenship in which responsibilities (e.g. to recognise the laws of the land) are seen to go hand-in-hand with rights (e.g. to have one's relationship publicly and legally recognised) (Stychin, 2006; Browne, 2011).

The question of how citizenship is constituted through sexual norms is therefore an important theme in citizenship studies, and one that is continuously in need of revision given the rights that have been granted to sexual minorities in many Western nations over the last few decades (McGhee, 2004; Weeks, 2009; Monro, 2010). For example, legislative reform (e.g. Civil Partnership Act, 2004; Equality Act, 2010), and associated changes in UK equalities policy, has had significant impact on those whose sexualities have traditionally fallen outside the putative boundaries of normativity (Stychin, 2006; Monro, 2010). Such shifts have granted lesbian, gay and bisexually-identified individuals the right to work, the right to social security, rights to adopt, a right to civil partnership, and the right to freedom from violence and harassment (Kollman and Waites, 2011). Significantly, many of these rights have been secured with reference to citizenships negotiated at the EU level, with the UK incorporating the European Convention on Human Rights in the UK Human Rights Act (1998). Given the existence of Article 14 of the European Convention (which prohibits discrimination on grounds of sex, race, colour, religion or political opinion) and Article 8 (on respect for private and family life), it has become somewhat easier for LGBT groups to overturn discriminatory and homophobic practices in the UK.[1]

Reviewing these legal changes, Weeks (2009) argues that there is now equivalence between lesbian, gay, bisexually and heterosexually-identified citizens in the UK (indicated by the title of his book *The World we Have Won*). Some commentators insist this represents an assimilation of gay and lesbian identities into existing social orders, leading to talk of *homonormativity* (Bell and Binnie, 2002; Duggan, 2002; Halberstam, 2008). Achievement of sexual citizenship is posited as one of the ways that gay and lesbian cultures are becoming effectively heterosexualized, the move into a mainstream world of rights and responsibility representing a moment of assimilation that blunts the transgressive potential of queer identification (Bell, 1995; Hubbard, 2001; Richardson, 2005). Nonetheless, not all sexual identities have been assimilated, with commentators noting a variety of sexual positions and practices which are clearly not accommodated within the state's definitions of citizenship, despite campaigns arguing for equal treatment: examples here include the lack of rights granted to the multiply-partnered (Aviram, 2008), those ambiguous in gender identity (Grabham, 2007) or those who choose to sell sex (Scoular, 2007). Also of note here is the uneven landscape of sexual rights bequeathed to individuals and groups of different ethnic and migratory backgrounds (Puar, 2006).

The concept of sexual citizenship is thus valuable both as a normative framing for rights campaigns as well as a critical lens for exploring the legalities of different sexual identity-positions and practices. However, the connections between individual rights and those granted to couples are not always straightforward (Richardson, 1998). For example, Stychin (2006) argues that national campaigns for the legitimation of same-sex partnerships were successful not because there was a recognition of individuals' right to sex, but because the state recognised the rights of LGBT identified individuals to love and care for one another.[2] Conversely, Langdridge (2006) notes that BDSM practitioners are denied rights as sexual citizens because the sexual practices which they pursue, while consensual and legal, appear to be divorced from notions of love and care (at least in the eyes of legislators). This suggests that in debates about citizenship, sexual rights and intimate rights are often entwined. As defined by Plummer (2003, p. 7), 'intimate citizenship' concerns rights to choose what we do with our bodies, feelings and emotions. Developing this, Sasha Roseneil defines intimate citizenship as the freedom to construct and live relationships safely, securely and according to personal choice, with respect, recognition and support from both state and civil society (Roseneil, 2010; see also Oswin and Olund, 2010). Here, there is recognition of the oscillation between sexual intimacies and 'extimacies', with private relationships being represented and articulated in public institutions (see also Wilkinson, 2009). The implications of this expanded model of sexual citizenship is that sustained attention needs to be paid to the ways that sexual autonomy and relational autonomy are regulated via legislation and policy that is concerned not just with sex

[1] The European Court of Human Rights has a substantial body of jurisprudence that backs up human rights issues in relation to sexual identity. Key cases have encouraged the decriminalisation of same sex sexual activity (e.g. Dudgeon v. United Kingdom, Application No. 7525/76, 22 October 1981; 1982 4); equalised the homosexual and heterosexual age of consent (e.g. Sutherland v. United Kingdom, Application No. 25186/94, 1 July 1997); reversed the military ban on recruitment of lesbians and gay-identified individuals (e.g. Smith and Grady v. United Kingdom, Applications Nos. 33985/96 and 33986/96, 27 September 1999; Lustig–Prean and Beckett v. United Kingdom, Application No. 31417/96, 27 September 1999) and asserted transsexual identity rights (Goodwin v. United Kingdom (2002) 35 EHRR 548; I. v. United Kingdom, Application No. 25680/94, 11 July 2002).

[2] At present, there remains concern that there is inequity between heterosexual marriage and same-sex civil partnerships in the UK: notably, the sexual rights group Outrage! have organised a campaign termed Equal Love (see http://equallove.org.uk/).